Supreme Court, U.S.
FILED
051504 MAR 24 2006
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 2005

EDWIN EDWARDS and
STEPHEN EDWARDS,
Petitioners,

--against--

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the government has a Fifth Amendment obligation to disclose any representations that are made to a cooperating witness to induce the witness to testify and that are relied on by the witness, even if the representations are not in writing and even if they are not enforceable.

2. Whether Booker v. United States should be retroactively applied to criminal cases on collateral review.

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OPINIONS BELOW

The decision of the United States Court of Appeals for the Fifth Circuit is reported at 442 F.3d 258 (5th Cir. 2006), and is reproduced in the Appendix at App. 1. The decisions of the United States District Court for the Middle District of Louisiana are unreported and are reproduced at App. 21 and App. 23.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on March 1, 2006. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

> no person shall . . . be deprived of life, liberty, or property, without due process of law. . .

The Sixth Amendment to the United States Constitution provides in pertinent part:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . .

STATEMENT OF THE CASE

On May 9, 2000, Edwin Edwards, the former four-term Governor of the State of Louisiana, and his son, Stephen Edwards, a successful lawyer, were convicted of, among other things, RICO and RICO conspiracy, extortion, and conspiracy to commit money laundering. On January 8, 2001, Governor

Edwards, then 73 years old, was sentenced to 120 months in prison; Stephen was sentenced to 84 months.

On August 23, 2002, the Court of Appeals for the Fifth Circuit affirmed their convictions. United States v. Edwards, 303 F.3d 606 (5th Cir. 2002). On February 24, 2003, this Court denied their Petition for a Writ of Certiorari. Edwards v. United States, 537 U.S. 1192 (2003).

On February 18, 2004, Petitioners moved to vacate their convictions pursuant to 28 U.S.C. § 2255. On July 1, 2004, they moved to amend their pleadings to allege a claim based on Blakely v. Washington, 542 U.S. 296 (2004). On September 20, 2004, that motion was denied. (App. 21) On November 9, 2004, the District Court denied the Section 2255 motions. (App. 23)

On March 1, 2006, the Court of Appeals for the Fifth Circuit affirmed. (App. 1)

STATEMENT OF THE FACTS

This case involves an oral promise made to a cooperating witness in a desperate last minute effort by the government to secure the witness's testimony. The oral promise – that the witness would not be liable for potentially over $300 million in damages to the State of Louisiana – may not have been enforceable. The federal prosecutors may not have had the authority under State law to make the promise. But that does not matter. What does matter is that the witness believed that the promise protected him from a State lawsuit and that the prosecutors deliberately concealed the existence of the promise from the defense.

In their motions pursuant to 28 U.S.C. § 2255, Petitioners submitted extensive evidence, including testimony from the cooperating witness, his lawyers, and the prosecutors, all acknowledging that the prosecutors had "guaranteed" the witness

that he would not owe "a nickel more" to the State of Louisiana. This evidence included testimony by the attorneys who had represented the witness during his negotiations with the federal government, and by the witness himself, confirming that the witness would not agree to cooperate without this "guarantee." Nevertheless, the Fifth Circuit affirmed the denial of a hearing and announced a rule that has the potential to eviscerate the long line of cases requiring the government to disclose impeachment material. The rule, stated simply, is this: **if a government promise or assurance to a cooperating witness is not reduced to writing and/or is not enforceable, it does not have to be disclosed**.

The criminal convictions of Governor and Stephen Edwards have their genesis in the State of Louisiana's decision in the early 1990's to award fifteen riverboat gaming licenses. Petitioners were charged with crimes in connection with five of those licenses. Though acquitted of charges relating to two of the five, they were convicted of the so-called "Treasure Chest" scheme, involving multimillionaire businessman Robert Guidry.

On October 15, 1998, Guidry plead guilty in federal court to conspiracy to commit extortion. His plea agreement provided, among other things, that he would forfeit $3,500,000 to the federal government. On the same day, Doug Moreau, a Parish District Attorney, submitted a letter to the United States Attorney stating that the federal prosecutors were "authorized to inform [Guidry] that [Moreau] would defer to federal prosecution in the matter [and] grant him immunity for crimes he may have committed concerning the Louisiana Riverboat Gaming Industry and specifically the Treasure Chest riverboat casino." (R010322;R010381/Exhs.1 and 2)

On October 16, 1998, Guidry entered his guilty plea before the Honorable John Parker. Guidry became concerned when Judge Parker indicated that he would not approve the plea deal, including, most importantly, the financial arrangements,